

STATE OF TENNESSEE
OFFICE OF THE
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Opinion No. 05-050

State Liability For Injury, Accident or Sickness Caused
by Exposure to Environmental Tobacco Smoke in Public Places

QUESTION

Whether, under Tennessee law, the State of Tennessee may be held liable for failing to take remedial action to insure its citizens do not breathe second-hand smoke in public places for the health, protection and welfare of the public.

OPINION

No. The State is immune from suit except when the General Assembly specifically waives immunity, and we have found no statute under which a citizen could file a claim against the State for injury, accident or illness caused by second-hand smoke in public places.

ANALYSIS

The State of Tennessee is immune from lawsuits unless the General Assembly specifically waives the State's sovereign immunity. Tenn. Const. Art. 1, § 17; Tenn. Code Ann. § 20-13-102(a).¹ The Tennessee General Assembly created a limited waiver of sovereign immunity by creating the Tennessee Claims Commission to hear and determine certain monetary claims against the State. Tenn. Code Ann. §§ 9-8-301, *et seq.* The categories under which sovereign immunity is waived are found in Tenn. Code Ann. § 9-8-307 and include damages for negligence in some situations.

¹ Art. I, Sec. 17 of the Tennessee State Constitution states, in pertinent part, as follows: "Suits may be brought against the State in such a manner and in such courts as the Legislature may by law direct." The doctrine of sovereign immunity is codified at Tenn. Code Ann. § 20-13-102(a):

(a) No court in the state shall have any power, jurisdiction, or authority to entertain any suit against the state, or against any officer of the state acting by authority of the state, with a view to reach the state, its treasury, funds, or property, and all such suits shall be dismissed as to the state or such officers, on motion, plea, or demurrer of the law officer of the state, or counsel employed for the state.

If a claim against the State does not fall under a category listed in Tenn. Code Ann. § 9-8-307(a)(1), then the State is not amenable to the claim. No category under Tenn. Code Ann. § 9-8-307(a)(1) appears to apply to an injury, accident or illness caused by second-hand smoke in public places. As a result, the Claims Commission would not have jurisdiction to hear such a matter.

State statutes provide criminal or civil penalties against vendors, manufacturers and the like for the sale of tobacco in certain circumstances (*e.g.*, to minors),² and one statute is aimed at reducing children's exposure to second-hand smoke. *See* Tenn. Code Ann. §§ 39-17-1601, *et seq.* (The Children's Act for Clean Indoor Air). We have found no statute, however, under which a citizen could file a claim against the State for injury, accident or illness caused by exposure to second-hand smoke in public places.

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² *E.g.*, Tenn. Code Ann. §§ 39-15-407, 39-15-408, 47-18-2004.